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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,150	07/25/2001	Gary R. DelDuca	47097-01080	6442

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/915,150	Applicant(s) DELDUCA ET AL.	
	Examiner Robert Madsen	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-86 is/are pending in the application.
- 4a) Of the above claim(s) 38-86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3,4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-37, drawn to a method of making a first sealed package enclosing meat surrounded by a second sealed package classified in class 426 subclass 129.
 - II. Claims 38-56 and 76-86, drawn to the method of forming a meat package having two layers sealed to the package, classified in class 426, subclass 129.
 - III. Claims 57-69, drawn to meat packaging wherein a first package enclosing meat is surrounded by a second package, classified in class 426, subclass 129.
 - IV. Claims 70-75, drawn to meat packaging comprising a partition between a section containing the meat and a pocket , classified in class 426, subclass 129.
2. The inventions are distinct, each from the other because:
3. Inventions I ,II,and IV are all unrelated to one another. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, Inventions II and IV have only one package,

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whereas Invention I has two packages, and invention IV requires a partition to form a pocket, whereas Invention II forms a pocket between two layers.

4. Inventions III is unrelated to Inventions II and Invention IV. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, Inventions II and IV have only one package, whereas Invention III has two packages.

5. Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, Invention III does not require a first package sealing step.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with John Gatz on April 24, 2003 a provisional election was made without traverse to prosecute the invention of I, claims 1-37.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 38-86 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1,5,6,9-11,16-18,20-22,25,26,29-30,35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorheim et al. (Meat Science 1999) in view of Colombo (US 6112890).

10. Sorheim et al. teach adding CO to modified atmosphere meat packages to maintain a red color as an improvement over conventional high oxygen modified atmosphere meat packages or low oxygen with oxygen scavenger packages for sale/consumption. Sorheim et al. teach 0.3-0.5% CO, along with 60-70% CO₂, 30-40% N₂, and 0% O₂ to form carboxymyoglobin from oxymyoglobin, which would have formed after the 2 hr. delay in grinding/cutting wherein the oxygen is removed from the package so that initially the level is less than 0.5% and within 2-3 days it is about zero (Page 157, 2.2 on 158, Table 1 on page 160, 4.3 on Page 163), as recited in claims 1,5,6,9-11,18,20,21,22,25,26,29-30,36,37. However, Sorheim et al. are silent in teaching a method of packaging comprising two packages as recited in claims 1 and 22.

11. Colombo is relied on as evidence of a conventional modified atmosphere meat package comprising an oxygen scavenger wherein a first package comprising a polystyrene foam tray sealed by a pvc overwrap is contained within a second package

that is a barrier film and forms a pocket(Example 1, Figures), as recited in claims1, 16,17,22,35.

12. Therefore, it would have been obvious to modify the method of Sorheim et al. and include a first package comprising a polystyrene foam tray sealed by a pvc overwrap is contained within a second package that is a barrier film and forms a pocket, since Colombo teaches this meat package is for use with modified atmospheres utilizing oxygen scavengers and Sorheim et al. teach adding carbon monoxide to a low oxygen gas mixtures will better preserve the meat than adding an oxygen scavenger to a gas mixture.

13. Claims 12 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorheim et al. (Meat Science 1999) in view of Colombo (US 6112890), as applied to claims 1,5,6,9-12,16-18,20-22,25,26,29-30,35-37, further in view of Verbruggen(DE1935566).

14. Sorheim et al. are silent in teaching just CO and CO₂ in the modified atmosphere. However, Verbruggen teaches preserving meat color with carbon dioxide and carbon monoxide after vacuum treatment (English Abstract). Therefore it would have been obvious to include only CO and CO₂ since one would have been substituting one modified atmosphere composition for another for the same purpose.

15. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sorheim et al. (Meat Science 1999) in view of Colombo (US 6112890), as applied to

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claims 1,5,6,9-12,16-18,20-22,25,26,29-30,35-37, further in view of Woodruff et al. (US 4522835).

16. Sorheim et al. are silent in teaching converting oxymyoglobin to deoxymyoglobin first and then to carboxymyoglobin.

17. Woodruff et al. teach treating storing meat in a reduced oxygen modified atmosphere of 0.1-3% CO, along with 20-60% CO₂, 40-80% N₂, and 0% O₂ and convert deoxymyoglobin to carboxymyoglobin on the surface of the meat. Woodruff et al. teach meat that is stored in a refrigerated or frozen state under low oxygen conditions prior to final sale/consumption packaging. Woodruff et al. teach removing the O₂ causes the meat to turn purple and Woodruff et al. returns the red color after storage by adding carbon monoxide (Abstract, Column 1, line 63 to Column 3, line 30, Examples). Therefore, to oxymyoglobin to deoxymyoglobin first and then to carboxymyoglobin would have been an obvious matter of choice, depending on if one is to store the meat prior to final packaging..

18. Claims 1-11,13-15,18, 20-30,32-34,36,37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorheim et al. (Meat Science 1999) in view of Breen et al. (US 5711978).

19. Sorheim et al. teach adding CO to modified atmosphere meat packages to maintain a red color as an improvement over conventional high CO₂ atmospheres for sale/consumption. Sorheim et al. teach 0.3-0.5% CO, along with 60-70% CO₂, 30-40% N₂, and 0% O₂ to form carboxymyoglobin from oxymyoglobin, which would have formed

after the 2 hr. delay in grinding/cutting wherein the oxygen is removed from the package so that initially the level is less than 0.5% and within 2-3 days it is about zero (Page 157, 2.2 on 158, Table 1 on page 160, 4.3 on Page 163), as recited in claims 1, 5, 6, 9-11, 18, 20, 21, 22, 25, 26, 29-30, 36, 37. However, Sorheim et al. are silent in teaching a method of packaging comprising two packages as recited in claims 1 and 22.

20. Breen et al. teach the conventional high carbon dioxide modified atmosphere meat overwrapped meat tray for sale/consumption. Breen et al. teach supplying a first package comprising a sealed tray, surrounding the tray with a bag, wherein the bag can be removed for retailing without destroying the tray, removing oxygen by vacuum and supplying/flushing a mixture of gases into the bag, and sealing the bag. As an extra measure of safety, Breen et al. further teach adding an oxygen scavenger in the pocket. Additionally Breen et al. teach the oxygen content is 30-50 ppm just after sealing the bag (Figure 7, Column 2, lines 27-62, Column 5, lines 33-55) as recited in claims 1-3, 5-8, 13-15, 22-28, 32-34. Therefore, it would have been obvious to modify the method of Sorheim et al. and include a first package comprising surrounding the tray with a bag, wherein the bag can be removed for retailing without destroying the tray, removing oxygen by vacuum and supplying/flushing a mixture of gases into the bag, such that 30-50 ppm remain between the bag and tray, and sealing the bag, since this is a conventional method of packaging using a high carbon dioxide modified atmosphere and Sorheim et al. teach an improvement over this method by including carbon monoxide. It would have been further obvious to include an oxygen scavenger

since Been et al. teach this is an extra measure of safety for removing oxygen. Breen et al. further teach adding an oxygen scavenger in the pocket.

21. Regarding claim 4, Sorheim et al. are silent in teaching any particular level of oxygen after 24 hours. However, Been et al. teach evacuating and flushing to achieve 30-50 ppm in the pocket that stabilizes to 250 ppm (the concentration in the tray) within 2-3 minutes and drops off significantly as it is absorbed by the meat (Column 5, lines 41-55). Therefore, it would have obvious that in 24 hours one would have virtually no oxygen since Been et al. teach the one may also add a scavenger, which would only reduce the oxygen level of 250 ppm faster.

22. Claims 12 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorheim et al. (Meat Science 1999) in view of Breen et al. (US 5711978), as applied to claims 1-11,13-15,18,20-30,32-34,36,37 above, further in view of Verbruggen(DE1935566).

23. Sorheim et al. are silent in teaching just CO and CO₂ in the modified atmosphere. However, Verbruggen teaches preserving meat color with carbon dioxide and carbon monoxide after vacuum treatment (English Abstract). Therefore it would have been obvious to include only CO and CO₂ since one would have been substituting one modified atmosphere composition for another for the same purpose.

24. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sorheim et al. (Meat Science 1999) in view of Breen et al. (US 5711978), as applied to

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claims 1-11,13-15,18, 20-30,32-34,36,37 above, further in view of Woodruff et al. (US 4522835).

25. Sorheim et al. are silent in teaching converting oxymyoglobin to deoxymyoglobin first and then to carboxymyoglobin.

26. Woodruff et al. teach treating storing meat in a reduced oxygen modified atmosphere of 0.1-3% CO, along with 20-60% CO₂, 40-80% N₂, and 0% O₂ and convert deoxymyoglobin to carboxymyoglobin on the surface of the meat. Woodruff et al. teach meat that is stored in a refrigerated or frozen state under low oxygen conditions prior to final sale/consumption packaging. Woodruff et al. teach removing the O₂ causes the meat to turn purple and Woodruff et al. returns the red color after storage by adding carbon monoxide (Abstract, Column 1, line 63 to Column 3, line 30, Examples). Therefore, to oxymyoglobin to deoxymyoglobin first and then to carboxymyoglobin would have been an obvious matter of choice, depending on if one is to store the meat prior to final packaging.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen 
Examiner
Art Unit 1761
April 25, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
for M. Cano